

WEBINAR WEDNESDAYS



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DIRECT EXAMINATION PREPARATION AND DELIVERY

Presented by:

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ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
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**Direct Examination:
Preparation & Delivery**

Joseph Chavez
CDAA Resource Attorney

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Introduction

- Direct examination is our bread & butter / our wheelhouse.
- In very large part how we prove our cases.
- If the court room is an arena, our witness's testimony is our ammunition.
- Should be more than merely a series of non-leading questions and responsive answers.
- Should be more than a simple chronological recounting of what the witness knows.

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Introduction

- A well-done direct examination is a powerful advocacy tool that will:
 1. Show the jury the witness' trustworthiness and credibility.
 2. Curtail opposing counsel's cross-examination.
 3. Persuade the jury what we know to be the truth.

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Topics Addressed

- Witness Preparation.
- Direct Examination Principles.
- Approaches with Different Types of Witnesses.
- Exhibits.

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Witness Preparation

- Most witness issues can be addressed with preparation.
- Prep, don't coach.
 - **Avoid conduct suggesting a particular answer.**
- The best way to prepare is to interview your witnesses well before trial; preferably with an investigator.
- Avoid interview two or more witnesses together.
- Hostile, questionable, critical witness: always have a third person present for possible impeachment.

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Witness Preparation

- Prosecutors must visit crime scene prior to trial and preferably before witness preparation.
- Review statement to police or transcripts?
- Discuss inconsistencies or mistakes.
- Have investigator present to write a supplemental report.

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Witness Preparation

- Tell them to tell the truth.
- Educate them as to process.
- Let them know its ok if they can't remember everything while they are on the witness stand.
- Encourage them to only answer questions that they completely understand; rephrase or repeat.
- Tell them not to guess or speculate.
- Answer the question, don't volunteer.

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Witness Preparation

- Its ok to testify that they talked to the prosecutor.
- Discuss possible areas of cross examination.
 - Explain that the questions are not evidence; only their answers to the questions.
- Discuss attitude and demeanor on witness stand.
- Do not tell them to withhold information, unless evidence has been excluded by the court.
- Speaking with defense counsel.

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Witness Preparation

- Explain the trial process and its vagaries.
 - Continuances.
 - Waiting in hallway for long hours.
 - Objections.
- Explain areas to avoid based on in limine rulings
 - i.e. probation or parole; prior convictions.
- If error occurs, you are in a better position legally if you warned your witness to avoid the problematic area.

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Witness Preparation

- Demeanor assessment: a witness' demeanor is as important as their testimony.
- Jurors form their impressions of a witness from the moment the person enters the courtroom.
- Your first impression of a witness will likely mirror the jurors first impression.
- Identify those things that unfavorably impressed you and work to correct them.

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Witness Preparation

- Inform your witness that their effectiveness depends on more than just testimony. It includes all factors contributing to a person's believability.
- Identify & explain why disturbing mannerisms distract from their testimony.
- Explain that the juror's will be evaluating all aspects related to credibility, such as attitude, demeanor, and body language.

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Witness Preparation

- Difference between "I don't know" and "I don't remember."
- Discuss the use of assertive language and caution against hedging on answers:
- "I think", "maybe" & "I guess" are not verbal bridges to persuasion.
- If you are going to ask witness to estimate time or distance make them practice before trial.

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Witness Preparation

- Reducing fear: if you lessen your witness's apprehension their testimony will improve.
- In important cases or crucial witness consider doing a "dry run" direct examination.
- Let witnesses review pictures or exhibits prior to their testimony.
- Instruct your witnesses that it is perfectly proper that they talked with you prior to trial.

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Witness Order

- Chronological order is most prevalent.
 - Logical sequence paralleling the crime's chronology.
 - Each witness called to the stand one time.
 - Modified Chronology Order – Detective recalled.
- Flashback technique starts with an eyewitness to the crime and following witnesses revert back to chronological sequence, starting with those events that lead up to the crime.
- Consider saving important witness for last.

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Witness Order

- Rule of Primacy & Recency:
- People tend to believe most deeply & remember longest the information they hear first and last.
- The rule applies to ordering of witnesses. Try to present your strongest and best witnesses first and last.
- The rule also applies within grouping of witnesses.
- If several witnesses testify to the same occurrence, pick the best two witnesses and place them first and last within the group.

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Goals

- Persuasively meet elements of charged offense.
- Advance Case Theory.
- Highlight/emphasize what makes witness credible.
- Ensure that the testimony is clear and understandable.
- Continue to build trust & credibility with jury through well-prepared, well-reasoned, and well-produced direct examination.

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Basics

- Know what you have to prove: jury instructions.
- Know what you want to argue in closing.
- Develop manner & method of direct for different types of witnesses.
- Establish witness credibility.
- You should have a reason for introducing every piece of evidence & posing every question.

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Basics

- Lay foundations / know your foundations.
- EC 771 Refreshing Recollection
- EC 1237 Past Recollection Recorded
- Arizona Rules of Evidence, Rule 803 (5) Recorded Recollection

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What Do I Have to Prove

- Pull the jury instructions when you begin to prepare the case.
- Analyze the evidence & witnesses you have against the elements you need to prove.

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What Do I want to Say in Closing Argument?

- One way to know your direct is complete is to know what you want to say in closing argument.
- Closing argument must be based on facts that are in evidence.

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Direct Examination Principles

- The Direct Examiner's objective is to elicit testimony that will recreate reality, with all its attendant facts and emotions.
 - Paint the picture, in a formal sterile court room.
- Imprinting – Direct examination is one part of a total process called "imprinting."
- The prosecutor must imprint upon the jurors minds the truthfulness of the People's case.

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Direct Examination Principles

- Imprinting has three steps:
 1. Voir dire & opening, tell the jurors what you're going to tell them through Direct Examination.
 2. Direct Examination, tell the jurors what you told them you were going to tell them.
 3. During closing argument, tell the jurors what you've told them through the Direct Examination.

Repetition is an effective method to "imprint" your case on the jury.

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Direct Examination Principles

- Know the difference between objectionable testimony and inadmissible evidence.
- A prosecutor must never inject error into the proceedings or infringe upon the defendant's right to a fair trial by the introducing inadmissible evidence.

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Direct Examination Principles

- **Approach:**
- Not advisable to write out verbatim each question to be read during direct examination.
- More effective approach is to outline general areas and salient subtopics within each area to cover with the witness.
- Pace of the direct examination questioning also has an impact on persuasiveness.
- Consider checking off areas in your outline, as they are testified about.

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Direct Examination Principles

- **Structure:**
- Three parts to Direct Examination
 1. Introduction
 2. Substance
 3. Closing
- Begin with a series of non-threatening questions such as name, occupation.
- Close with impactful or important testimony/point.

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Direct Examination Principles

- **Structure:**
- Rule of Primacy & Recency applies to the internal structure of a witness's testimony.
- Try to place the important and interesting information near the beginning and at the conclusion of the witness's testimony.
- Try to place the boring aspects of the testimony in the middle of the witness's testimony.

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Direct Examination Principles

- **Establishing Credibility:**
 - Background: age, employment, how long lived in the community, etc.
 - Opportunity/ability to observe/perceive.
 - Details.
- **Reasons & Explanations:**
 - Ask why the witness acted in a certain way or remembers certain details.

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Direct Examination Principles

- **Establishing Credibility:**
- Law enforcement witnesses:
 - Introduced through their professional status
 - "ETE" method: Education, Training, Experience.
 - In that order.
 - Enhances credibility.

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Direct Examination Principles

- **Establishing Credibility:**
 - **Repetition:**
 1. Have witness go through testimony.
 2. Then go through maps/diagrams.
 3. Then scene pics.
 4. Then physical evidence.
- Witness has covered important parts of the testimony 4 times.

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Direct Examination Principles

- **Context:**
- All crimes are committed within a context of location, time, surroundings, & participants.
- Direct examiner should try to establish a context within which a witness's testimony will fit.
- "Set the scene", then have the witness place themselves within the context.
- Recreate scene with facts, emotions, & senses.
 - Ask the witness to explain how they felt at the time of the offense.

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Direct Examination Principles

- Anticipate Defenses:
- Alibi.
- ID.
- Self Defense.
- Lack of intent / knowledge.
- Mental Defenses.

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Direct Examination Principles

- Direct examination should be so complete that nothing new comes out on cross-examination.
- Ideally the jury will be bored with the defense's cross-examination.

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Direct Examination Principles

- **The Jury:**
- Two things are communicated to the jury on Direct Examination:
 1. The witness's testimony, and
 2. The witness's veracity and truthfulness.
- Jurors tend to like & believe others who are similar to them.
- Elicit from your witnesses things that will make the jurors feel "comfortable".
- Attempt to establish **commonality** between your witnesses and jurors: occupation, family, neighborhood.

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Direct Examination Principles

- **The Jury:**
- Two considerations to balance:
 - Remember the jury does not know your case as well as you do.
 - Jurors have a limited attention span.

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Direct Examination Principles

- **Questions:**
- The process of Direct Examination has two parts: asking questions and **listening to answers**.
 - The answers sometimes surprise you.
 - Allow witness to complete answer.
- The jury's focus should be on the answers, not your questions.
- Your role is to help the witness relay evidence to the jury.
- Keep questions brief and let answers be informative.

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Direct Examination Principles

- **Questions:**
- You can direct testimony without leading. Consider the difference between:
 - "How near the car were you?" & "How far from the car were you?"
 - "Did you see the police car?" & "Did you see a police car?"

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Direct Examination Principles

- **Questions:**
- Get beyond the "windshield wiper" what happened next questions.
- Loop back: use part of the witness's last answer in the next question.
- Pace: slow down during the important parts.
- Head notes or signal posting:
 - Tells the witness, jury, and judge where you are going next.

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Direct Examination Principles

- **Questions:**
- Incorporate important words from the jury instructions for the charged offenses in your questions, e.g., "fear" or "force" in robbery or "penetration" in sexual assault cases.

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Keeping A Record

- Everything should be on the record.
- Gestures, motions, actions, distance estimations.
- Agreements, stipulations, interactions.
- Make sure sidebar conversations get on the record - during a break.
- If it is not on the record – it did not happen.
- Think of the appellate record.

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Most Common Errors

- Elicit too much unimportant information.
 - Can bore or confuse the jury.
- Spend too little time on critical parts of the witness's testimony.
 - Must fully develop your facts so the jury understands and appreciates them.

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Direct Examination Principles

- **Redirect:**
- If you redirect in an area, the jury will give it heightened importance.
- Only re-direct on things that are truly important.
- Always taking a chance that the harm will be magnified instead of being corrected.

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“The People Rest”

- You have presented evidence as to each element of each offense charges, to overcome a PC 1118 or Rule 20 motion.
- Established jurisdiction.
- Established ID of defendant(s).
- Move all evidence into evidence.
- Richland County example.

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Direct Examiner

- In direct examination the goal is to enhance your witness's testimony by virtue of your demeanor.
- Your gestures, posture, attitude either contribute or detract from that goal.
- Gestures do not show in the record: nod your head affirmatively or slightly smile.
 - Over doing this looks like coaching.
- To emphasize a question you can lean forward, move closer to the witness or jury, take off your glasses.

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Direct Examiner

- **Location:**
- Best Direct Examination occurs when the jury is not aware of the prosecutor's presence.
- A good direct examiner suppresses ego.
- Choose a location where the witness can see you but the jury can not.
 - Generally, this location is at the far end of the jury box.
- Far, forces witness to speak up; near, draws attention.

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Direct Examiner

- Preparing questions & listening to answers
- Not enough to use words that can be understood.
- You must use words that can not be misunderstood.
- Avoid fillers: a short phrase for the purpose of buying time to think before the next question.
 - "I see", "Okay", "Uhhhhh", "Now let me ask you..."

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Manner & Method: Type of Witness

- Different types of witnesses require different preparations & examinations.
- One-on-one witness.
- Law enforcement witness.
- Expert witness.
- Frightened witness.
- Hostile witness.
- Child witness.

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Witnesses

- **"One-on-one" witness:**
- Where the basic issue is the victim's credibility versus the defendant's denials.
- Witness's credibility increases in direct relation to the time the jury "gets to know the witness" and grows as the jury learns more about the witness.
- Basic tenet of human nature is that we trust our friends and are suspicious of strangers.

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Witnesses

- **“One-on-one” witness:**
- Ask questions that let the jury identify with the witness through detailed questioning.
- Use introductory questions to elicit personal information.
 - How long have you worked for Well Fargo?
 - What is your position there?
 - What type of duties does your job entail?

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Witnesses

- **“One-on-one” witness:**
- Preliminary questions develop the witness’s personal background.
- The jury needs to know something about the person talking to them.

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Witnesses

- Effectively use repetition and imprinting.
- Repetition of key testimony can occur through your questioning style.
- Loopback technique: In critical areas consider repeating the witness’s answer as a preface to the next question.
 - Witness: He pointed the gun at my face.
 - People: Now, when the defendant pointed the gun at your face...
- Loopback theme phrases: “Punched in face”

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Witnesses

- Effectively use repetition and imprinting.
- Cover the testimony in different ways.
 - Take the witness through Direct Examination in detail.
 - Ask the witness to draw or explain a prepared diagram of the scene.
 - Use the diagram as the vehicle to go through the testimony again.
 - Show witness photographs/video of the scene.
 - Show the witness physical evidence.

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Witnesses

- Effectively use repetition and imprinting.
- If the crime involved movement or touching have the witness get off the stand and give a physical demonstration.
- You can be the defendant in the demonstration.
- If the victim has injuries or scars have them show the jury.
- Describe this testimony for the appellate record.

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Witnesses

- Identifying the defendant:
- Graduality to heighten & strengthen the identification.
- Series of small questions leading to the eventually to the defendant's identification.
 - Gender, race, body type, hair, eyes, clothing.
- End with: "Do you see the person who stole your purse in the courtroom today?"
- "Please point to that person and tell us what he is wearing in the courtroom today".
- "May the record reflect..."

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Problem Witnesses

- Some witnesses by their nature present problems in court.
 - Personality, attitude, language, professional status/background.
- Preparation can mitigate these issues.
- The first principle of problem solving is to recognize you have a problem.
- The witness may not realize they have a defect.
- You must identify it and correct it.

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Problem Witnesses

- **“Boring” Witness:**
- Use demonstrative exhibits to enhance the testimony.
- Ask how things looked, smelled, felt etc.
- Try to draw the jurors into the Direct Examination by occasionally asking the witness to “tell us...”.
- Watch the juror’s reaction during direct. If you are losing them, make adjustments such as modulating your voice.

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Problem Witnesses

- **“Law enforcement” Witness:**
- Supposed to be professional witnesses but can be too self-assured & complacent. They can get sloppy in their preparation and testimony.
- Make sure that they review their reports prior to testifying.
 - Discuss inconsistencies & mistakes.
- Make sure they know that they can refer to their report.
- In limine rulings.
- If just got off of graveyard shift; explain to jury.

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Problem Witnesses

- **“Law enforcement” Witness:**
- Introduce them with a series of questions regarding professional background, such as years in the department, present assignment, special training related to the case.
- Bolsters their credibility and fulfills jurors expectations.
- Don't allow them to use **cop talk**; or have them explain it through follow-up questions.

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Problem Witnesses

- **“Tainted” Witness:**
- People with pre-existing impediment to their credibility
 - Informants, convicted felons, accomplices, persons given immunity.

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Problem Witnesses

- **“Tainted” Witness:**
- Instruct witnesses with prior convictions to admit the impropriety without a self-serving explanation.
- Alert jury on voir dire.
- **Principle of Pre-emption:** blunt the impact of damaging facts by producing them yourself during direct examination.

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Problem Witnesses

- **“Tainted” Witness:**
- Any “agreements” with the witness must be covered in direct.
- The Principle of Primacy & Recency can be used effectively with Pre-emption for tainted witnesses:
- Consider beginning the testimony with positive information. Cover the negative information in the middle of the witness's testimony.

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Problem Witnesses

- **“Tainted” Witness:**
- Research shows when contradictory information is presented in a single communication, there is a tendency for the first items presented to dominate the total impression.
- Order of testimony: Consider bringing out the information about the conviction(s) after the testimony that incriminates the defendant.

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Problem Witnesses

- **“Expert” Witness:**
- Qualify the witness as an expert.
 - Detail Education, Training, & Experience.
- Ask the court to recognize the witness as an expert?
- The court's ruling will enhance the expert's importance and credibility.

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Problem Witnesses

- **“Expert” Witness:**
- Tend to speak in professional jargon.
- Do not let their technical terms cloud the substance of the testimony, through follow-up questioning.
- Strike a balance between professional terms and understandable layman’s language.
- Keep questions short and its fine if their answers are narrative.
- Appropriate follow-up questions after narrative answers.

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Problem Witnesses

- **“Expert” Witness:**
- If an expert used an instrument to measure or analyze have him/her bring a photograph of the instrument.
- With multiple wounds have the pathologist use a mannequin/diagram to show location and trajectory.
- Use experts for negative evidence (no fingerprints, DNA, gun shot residue).

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Problem Witnesses

- **“Frightened” Witness:**
- Testifying is a frightening experience for the average person.
- Scared witnesses present problems: **they go blank, demeanor lacks confidence**, their fear can affect the jury’s assessment of their credibility.
- Most lay witnesses are afraid of the unknown.
- Prior to trial must familiarize them with testifying.

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Problem Witnesses

- **“Frightened” Witness:**
- On witness stand begin with background questions to put them at ease.
 - Name, age, address, occupation.
- If witness appears to be nervous; ask “Are you nervous?” and let the witness explain why he/she is nervous.
- Jurors can relate to nervousness and will likely sympathize with the witness.

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Problem Witnesses

- **“Frightened” Witness:**
- Use “topic sentences” to help focus on the answers.
- Topic sentences alert the witness and jury to the coming area of inquiry; “Sign Posting”.
- Example: “ Now, I’d like to ask you some questions about...”; “Let’s focus on...”

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Problem Witnesses

- **“Frightened” Witness:**
- If witness misses an area of testimony, ask follow-up questions.
- Example: “do you recall any (more) (further) (other) (different) (additional)...”
- Fear causes lapses in memory.
- Must monitor answers to ensure completeness.

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Problem Witnesses

- **“Frightened” Witness:**
- If the witness is frightened by the defendant’s presence in the courtroom, you must take corrective action.
- Stand between the witness and defendant during questioning.
- Better practice is to stand where the witness is forced to look away from the defendant and towards the prosecutor when answering questions.

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Problem Witnesses

- **“Child” Witness:**
- Extra care; establish rapport.
- Take them to the courtroom prior to trial.
- Let them sit on the witness stand.
 - Turn on the microphone.
- Explain who will be in the courtroom.
- Establish that the child is competent to testify.
- Outside the jury’s presence?

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Problem Witnesses

- **“Missing” Witness:**
- Sometimes a witness is not available for trial due to death, injury, or disappearance.
- Use transcript testimony.
- Do not read the questions and answers to the jury.
- Use a member of your staff to be the witness.
- Let surrogate witness sit on the witness stand.
- Submit the transcript to the judge and defense attorney for review.

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Problem Witnesses

- **“Hostile” Witness:**
- People who do not want to testify for any reason.
- Identify the reasons behind the hostility:
 - Fear
 - Friendship

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Problem Witnesses

- **“Hostile” Witness:**
- Do not attack a hostile witness who is inherently sympathetic, such as senior citizens or defendant’s mother.
- These witnesses invoke natural jury sympathy and jurors will not appreciate your attacking an apparently defenseless witness.
- You become the “bad guy”, regardless of the witness’s inherently hostile nature.

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Problem Witnesses

- **“Hostile” Witness:**
- Do not attack a hostile witness unless you are convinced that the jury shares your belief that the witness was evasive, coy, or antagonistic.
- Do not attack a witness until everyone in the courtroom believes the witness is hostile.
- Know the law regarding what is necessary to have a witness declared hostile.
- If you are confident that the court will honor your request, ask the court to declare the witness to be a “Hostile witness”.

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Problem Witnesses

- **“Hostile” Witness:**
- If your hostile witness is giving evasive or unresponsive answers, let the jury know it.
- Ask the identical question again and again until the witness gives you a straight answer.
- Use prior statements to impeach the hostile witness with inconsistency.

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Problem Witnesses

- **“Hostile” Witness:**
- Use prior statements to impeach the hostile witness with inconsistency.
- When impeaching, do not show the entire statement to the witness first.
- Have the witness commit to the prior statement.
- Goal is to have the witness recant false verbal testimony in favor of the truthful prior statement.
- If that does not work, have statement introduced as “Past Recollection Recorded” or “Recorded Recollection”.

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Problem Witnesses

- **“Green-ing” Your Witness - *People v. Green* (1971) 3 Cal.3d 981; *State v. King* 180 Ariz. 268 (1994): feigning lack of memory.**
- A prior statement by a witness that is inconsistent with his/her trial testimony is admissible to establish the truth of the matter.
- The statement has to be inconsistent with the witness' testimony.
- The court will not permit a witness to become a turncoat witness and deliberately obstruct justice in a case by giving evasive answers and “I don't remember answers”.

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Problem Witnesses

- **“Green-ing” Your Witness:**
- “Inconsistency in effect, rather than contradiction in express terms, is the test for admitting a witness’ prior statement...”
- “When a witness’s claim of lack of memory amounts to **deliberate evasion**, then inconsistency is implied.”

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Problem Witnesses

- **“Green-ing” Your Witness, suggested approach:**
- Lock witness into current testimony.
- Draw out as many facts as you can before the incriminating part.
- Question witness about giving a previous statement.
 - Now you get to lead!
- Confront witness with prior statement.

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Problem Witnesses

- **“Green-ing” Your Witness, suggested approach:**
- DO NOT ASK, “**DO YOU REMEMBER** GIVING A PRIOR STATEMENT?”
- Avoid suggesting a “way out” for your difficult witness.
- Consider searching for motivations a witness has in changing statement.
- **Don’t excuse witness, make them subject to recall (EC 770).**
- Call officer/witness who took statement to testify about content of prior statement.

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Problem Witnesses

- **“Green-ing” Your Witness:**
- “As long as there is a reasonable basis in the record for concluding that the witness’ ‘I don’t remember’ statements are **evasive** and **untruthful**, admission of the prior statement is proper.”
- Note: if the court finds the witness really doesn’t remember, then the statement is not inconsistent and not admissible under Evidence Code sections 1235 and 770.

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Problem Witnesses

- **“Hostile” Witness:**
- Do not ask the witness “why” the inconsistency exists.
- You can provide the “why” during your closing argument.

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Exhibits

- **Why use?**
- **Inform** – educate, inform the jury, clarify issues, show vantage point.
- **Connect** – take the jurors into your case, give them something tangible.
- **Memory** – Give the jurors something to remember, use as a reference during deliberations.
- **Reinforce & Persuade** – Use exhibits to reinforce your case theory & persuade the jury.

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Exhibits

- Jurors want to touch/see something.
- Think about what you do have:
 - Weapon
 - Booking photo
 - Surveillance video
 - Body Cam footage
 - Documents: Originals, certified, authenticated, custodian necessary?
 - Ripped clothing

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Logistics

- Chain of custody
- Stipulation
- Bring in each person in chain
- Show evidence stored in marked, sealed, tamper-proof container.

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Logistics

- Ask court to mark (for identification) – P=#s, D=A's
 - Keep track...or People's next in order
- Show to defense.
- Ask to approach witness.
- Avoid ritualistic language.

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Logistics

- Witness recognizes object.
- Know what it looked like on the date of the incident.
- Establish same condition, accurately reflects.

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Logistics

- Move into evidence:
 - All at once
 - One at a time
- Permission to publish to the jury.
- Don't have to move all exhibits into evidence.
- Blow ups.
 - Leave it up!

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Exhibits

- If you have a large number of exhibits, mark them prior to trial.
- Marking numerous exhibits during trial distracts from the flow of the witnesses testimony.
- If you want other witnesses to mark the exhibit, do not move it into evidence.
- If you don't want defense to mark on it - move it in.

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Exhibits

- You can publish exhibit to the jury without moving it into evidence.
- Know local rules/court procedures for **drugs, weapons, biological samples**.
- Safety issues.

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Photographs

A Great Tool



- A Picture is Worth 1000 Words
- Supports Witness Testimony - Jury sees with their own eyes what witness saw

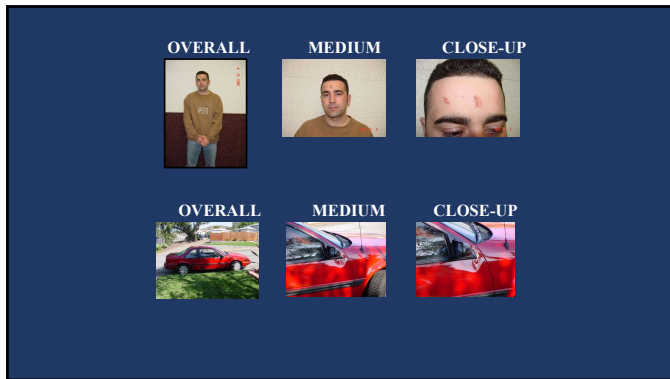
92

Photographs

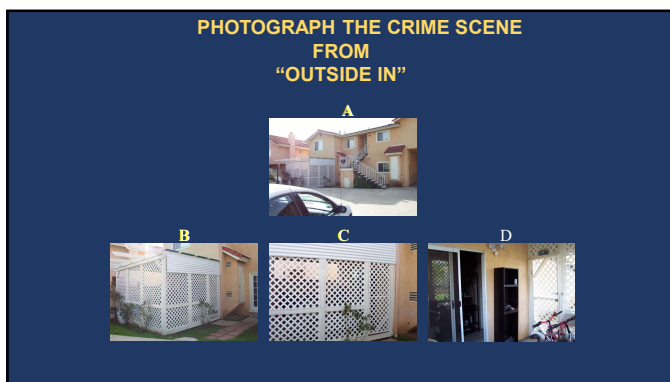
When using pictures of a specific object or individual:

- Make sure the photograph completely covers your scene or person.
- Establish a clear concept of how an object or area interrelates to another.
- Overall = Cover a wide area
- Medium = Orientation of an object within a scene
- Close-up = Show specific details

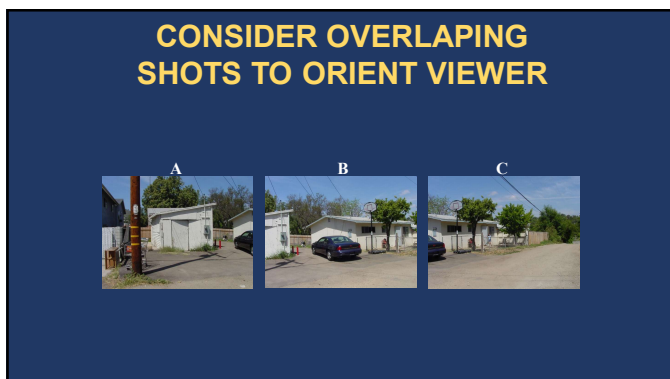
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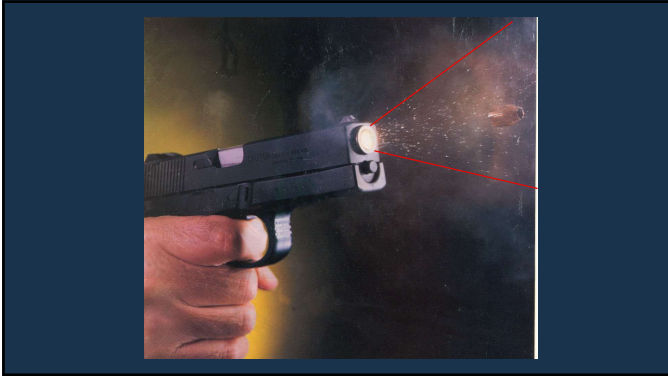
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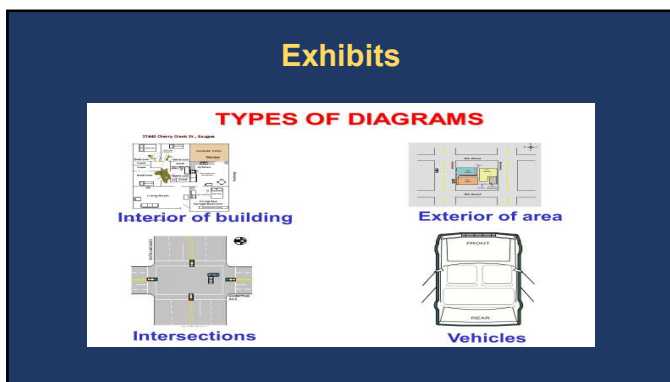
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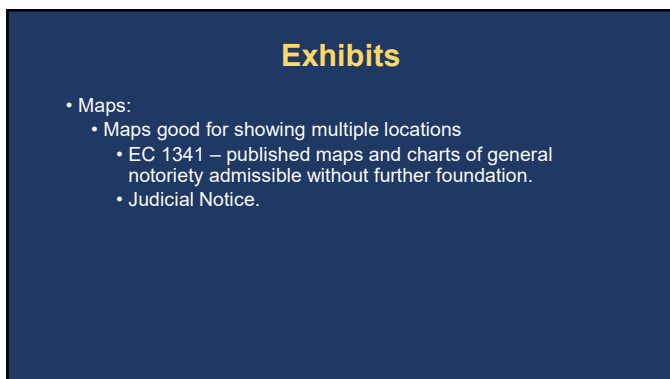
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VISUAL AIDS

- Animation – Admissible
- ***People v. Hood*** - 53 Cal. App.4th 965, 968-969, 62 Cal.Rptr. 2d 137 (4th Dist. 1997)
 - Demonstrative
 - Not subject to *Kelly*
 - “tantamount to drawings by the experts from both sides to illustrate their testimony.”

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VISUAL AIDS

People v. Duenas (2012) 55 Cal.4th 1

- Animation used by expert to illustrate his theory
 - A demonstrative aid to the jury.
 - distinction between computer animation and **computer simulation is substantive evidence.**
- -Animation often has a limiting instruction

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Concluding Thoughts

- A well-done direct examination is a powerful advocacy tool that will show the jury the witness' trustworthiness and credibility, curtail opposing counsel's cross-examination, and persuade the jury of the prosecution's case theory.

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Concluding Thoughts

- Do the right thing without exception.
- Prepare, Prepare, Prepare.
- Remember that you are not just dealing with a case, you are dealing with real people who have real problems with real risks.

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